

AMENDED IN ASSEMBLY JUNE 21, 2004

AMENDED IN SENATE MAY 18, 2004

AMENDED IN SENATE MAY 3, 2004

AMENDED IN SENATE APRIL 13, 2004

**SENATE BILL**

**No. 1904**

**Introduced by Senator Florez  
(Coauthors: Senators Escutia, Karnette, and Perata)**

March 4, 2004

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~~An act to add Article 1.5 (commencing with Section 865) to Chapter 7 of Division 1 of the Financial Code, relating to financial institutions, and declaring the urgency thereof, to take effect immediately~~ *An act to amend Section 212 of the Labor Code, relating to wages, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1904, as amended, Florez. ~~Banks: paycheck cashing charges~~  
*Payment of wages: direct deposit.*

*Existing law prohibits the payment of wages by use of various instruments unless they are negotiable and payable in cash, on demand, without discount, and at an established place of business in the state. Under existing law, violation of this provision is a misdemeanor.*

*This bill would exempt an employer from these provisions if the employer makes a written offer to an employee to deposit the employee's wages in a financial institution selected by the employee and the employee voluntarily authorizes the direct deposit, or the written offer contains specified advisements regarding transaction fees, as defined, that may be imposed by a financial institution. By changing the*

*definition of a crime, this bill would impose a state-mandated local program.*

*This bill would require the Labor and Workforce Development Agency to notify employers within a prescribed period regarding the law relative to the payment of wages by direct deposit, and to develop and make available materials and forms for employers to make a written offer to directly deposit wages or for an employee to obtain direct deposit.*

*This bill would make an employer who knowingly failed to comply with the law relative to the payment of wages by various instruments subject to a civil penalty of up to \$1,000, and would exempt the employer from any civil penalties under the Labor Code Private Attorney General Act of 2004.*

*This bill would preclude any action against an employer or any other person for a violation of law relative to the payment of wages arising from a transaction fee that occurred before the effective date of this bill, if enacted.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law provides for the regulation of banks by the Commissioner of Financial Institutions. Existing law imposes various requirements on banks with regard to deposits, checks, and investments.~~

~~This bill would prohibit a bank from assessing a charge or fee to cash a paycheck for a person who does not have an account at the bank if the paycheck was issued by the bank for a business client of the bank that provides the paychecks to its employees.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

~~SECTION 1. Article 1.5 (commencing with Section 855) is~~

SECTION 1. *Section 212 of the Labor Code is amended to read:*

212. (a) No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

(b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.

(c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank's address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

(d) *The prohibitions imposed by subdivision (a) do not apply with respect to payment of an employee's wages due, or to become due, or an advance on wages to be earned, to an employer who makes a written offer to deposit the employee's wages or advance on wages directly in an account in any financial institution in the state chosen by the employee, so long as the employee voluntarily authorizes the direct deposit, or the employer advises in the written offer that a transaction fee may be avoided by the employee authorizing the direct deposit, by the employer agreeing to pay the transaction fee, or by the employer contacting the financial*

1 institution to discuss avoidance of the transaction fee. For  
2 purposes of this section, “transaction fee” means a fee or charge  
3 imposed by a financial institution on a person who does not  
4 maintain an account with the financial institution to cash a payroll  
5 check or to permit the use of a payroll debit card for the payment  
6 of wages due or to become due, or an advance on wages to be  
7 earned.

8 (e) (1) The Labor and Workforce Development Agency shall  
9 notify employers in writing of the provisions of this section at least  
10 once before January 1, 2005, and again before July 1, 2005. The  
11 notification may be included in a document created primarily to  
12 disseminate information on other programs, including  
13 unemployment insurance programs, that are implemented by the  
14 agency.

15 (2) The agency shall develop and make available to employers  
16 and employees sample written materials and forms to be used by  
17 an employer to prepare a written offer for the direct deposit of  
18 wages or of an advance on wages, or by an employee to obtain  
19 direct deposit. The materials and forms shall be made available in  
20 English, Chinese, Korean, Spanish, Tagalog, and Vietnamese.

21 (f) An employer who knowingly fails to comply with this  
22 chapter is subject to a civil penalty of up to \$1,000, and is not  
23 subject to civil penalties under the Labor Code Private Attorneys  
24 General Act of 2004 (Part 13 (commencing with Section 2698) of  
25 Division 2 of the Labor Code).

26 (g) No action may be brought pursuant to this chapter against  
27 an employer or any other person for the imposition of a transaction  
28 fee that occurred before the effective date of the measure adding  
29 this subdivision.

30 SEC. 2. This act is an urgency statute necessary for the  
31 immediate preservation of the public peace, health, or safety  
32 within the meaning of Article IV of the Constitution and shall go  
33 into immediate effect. The facts constituting the necessity are:

34 In order for the provisions of this act to take effect as soon as  
35 possible, it is necessary that this act take effect immediately.

36 SEC. 3. No reimbursement is required by this act pursuant to  
37 Section 6 of Article XIII B of the California Constitution because  
38 the only costs that may be incurred by a local agency or school  
39 district will be incurred because this act creates a new crime or  
40 infraction, eliminates a crime or infraction, or changes the penalty

1 *for a crime or infraction, within the meaning of Section 17556 of*  
2 *the Government Code, or changes the definition of a crime within*  
3 *the meaning of Section 6 of Article XIII B of the California*  
4 *Constitution. added to Chapter 7 of Division 1 of the Financial*  
5 *Code, to read:*

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7                   Article 1.5.—Paycheck Charges  
8

9       855.—A bank may not assess any charge or fee to cash a  
10 paycheck for a person who does not have an account at the bank  
11 if the paycheck was issued by the bank for a business client of the  
12 bank that provides the paychecks to the employees of the business  
13 client.

14       SEC. 2.—This act is an urgency statute necessary for the  
15 immediate preservation of the public peace, health, or safety  
16 within the meaning of Article IV of the Constitution and shall go  
17 into immediate effect. The facts constituting the necessity are:

18       In order for the provisions of this act to take effect as soon as  
19 possible, it is necessary that this act take effect immediately.

